

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant's first and only assignment with the employer began on November 24, 2004. His last day on the assignment was September 21, 2005. He worked full time as a laborer in the employer's business client's window manufacturing business. The assignment ended because the business client and the employer determined to end it due to an incident on September 23, 2005.

The claimant came into the business client's workplace shortly before noon on September 23 to pick up his paycheck. He also wanted to inquire as to his application for permanent employment with the business client. The employer's assignments with the business client are usually on a temp-to-hire basis; the claimant had been given a job application for permanent employment with the business client that he had completed and turned in approximately May 2005. He was disgruntled because he had been making occasional inquiries of Mr. Evans, the on-site supervisor, to which Mr. Evan's response was always that he had not heard anything, or he did not know. The claimant did not understand that Mr. Evan's was the employer's representative at the worksite, and that he had no control or direct access to information as to the hiring decisions of the business client.

On this occasion, when Mr. Evans responded that he had not heard anything with regard to the claimant's application for permanent employment, the claimant became extremely frustrated and retorted that the employer and the business client were "anti-American" and that if he was "Mexican," he would have been hired on by now. Mr. Evans then took the claimant to the business client's human resources manager to pursue the matter, where the claimant repeated his comments and added that they should stop "pissing on my head and telling me it's raining." Mr. Evans and the human resources manager both acted nonchalant and did not seek to stem the claimant's outburst; however, Mr. Evans testified that the claimant's language and body language made him feel threatened so as not to challenge the claimant.

At the conclusion of this exchange, the claimant's companion, Ms. Blaha, entered the office and the situation escalated; however, as the claimant's involvement from that point was virtually non-existent, it is not relevant to determining whether the claimant's own behavior amounted to work-connected misconduct. The claimant and Ms. Blaha left the premises, and the employer subsequently contacted the claimant by phone and informed him he was not to return to work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was

discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code section 96.5-2-a.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant's behavior toward Mr. Evans and the business client's human resources manager shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. While, perhaps, Mr. Evan's might have been able to calm the claimant down from his outburst at some point, even the claimant's initial comments and actions were unacceptable. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's October 10, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of September 23, 2005. This disqualification continues

until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

ld/kjw